

See 86 Ill. Adm. Code 150.201. (This is a GIL.)

January 14, 2004

Dear Xxxxx:

This letter is in response to your letter dated October 29, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are writing on behalf of our client, a STATE corporation, which has recently commenced business activity into your state.

Our client's business activities consist of two separate and distinct activities:

1. The sale of tangible personal property not permanently affixed to real estate, which is equipment used in the food and beverage industries.
2. The performance of construction services related to building maintenance and renovation. For the construction activity, our client serves as a general contractor, with all actual construction subcontracted with STATE or local contractors.

Specific questions as to the sales/use liability of our client in your state are as follows:

1. Does the construction activity of our client performed by subcontractors under the supervision of our client as a general contractor establish nexus for sales/use tax in your state? Please confirm.

2. Assuming nexus is established by construction activities, are retail sales in your state subject to sales/use tax, assuming the retail sales in themselves do not establish nexus? What is the tax base in your state for taxable retail sales?
3. For sales used for resale, what documentation does your state require for the resale exemption?
4. For materials consumed in the construction process, what is the tax base, and what sales/use tax liability is due for--
 - a. Materials purchased within your state and used in construction, assuming sales tax is paid at the time of purchase.
 - b. Materials transported from STATE to your state and used in construction, on which sales tax is paid in STATE at time of purchase.

Your reply to our questions by a letter with the appropriate statute, regulations and ruling citations would be helpful, as our client wishes to comply with the sales tax statutes of your state.

Your reply at your earliest convenience would be appreciated.

You inquired about the principles of nexus. Please see 86 Ill. Adm. Code 150.201. For information regarding sales for resale, please see 86 Ill. Adm. Code 130.210. Information regarding construction contractors can be found at 86 Ill. Adm. Code 130.1940.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk